

Strict Liability Concept Not Appropriate for Biotechnology-derived Crops

In recent years, some states have introduced "strict liability" legislation to hold biotechnology companies liable for the unintended presence of biotechnology-derived material in a conventional or organically grown crop. Under this concept of strict liability, a biotechnology company could be held liable for "damages" allegedly caused by a biotechnology-derived product, even if that product was fully cleared for use by the U.S. government, produced using generally acceptable agronomic practices, and the company was not at fault in any way. This would be a dramatic new expansion of traditional strict liability law, which is applied only to ultrahazardous activities, or the manufacture of defective products.

On behalf of its member companies, the Biotechnology Industry Organization (BIO) opposes any such legislation on the following grounds:

- biotechnology-derived seeds and plants do not fit the well-established legal criteria for strict liability treatment – they are neither ultrahazardous nor defective *per se*;
- biotechnology-derived crops are highly regulated by one, and usually at least two, agencies of the federal government and fully cleared for use after rigorous scientific risk assessment; and
- farmers and consumers are already fully protected under existing laws and civil legal frameworks, including product liability law.

Some have used the potential presence of organic farming as justification to impose this unprecedented expansion of liability law on biotechnology companies. However, existing law does not support this argument.

- The federal organic standards are process-based. If organic farmers follow the processes set forth by USDA, they can obtain organic certification for their operations. Later, if some material from a biotechnology-derived crop is found in their organic product, that product may still be sold as organic under the law, and the organic farmers do not lose their organic certification.
- An organic farmer, or any farmer, who signs a contract guaranteeing 0% GMO assumes the responsibility for ensuring that level, just as that farmer bears the responsibility for meeting any other contractual obligation, such as produce quality, size or color.

Contact

The Biotechnology Industry Organization (BIO) represents more than 1,000 biotechnology companies, academic institutions, state biotechnology centers and related organizations in all 50 U.S. states and 33 other nations. BIO members are involved in the research and development of health care, agricultural, industrial, and environmental biotechnology products. For additional information and questions, please contact BIO's Department of Food and Agriculture at 202.962.6647.